

## **SPEAKING NOTES, NORMAN WELLS MAY 3-5/11 SLUP HEARING**

Déline Land Corporation, Déline Renewable Resources Council and Déline First Nation<sup>1</sup>

May 2, 2011

### **1. LAYOUT**

To avoid unnecessary repetition, these speaking notes (the “**Speaking Notes**”) assume that the Sahtu Land Use Planning Board (the “**SLUPB**” or the “**Board**”) is familiar with the *Submission of the Déline Land Corporation and the Déline Renewable Resources Council to the Sahtu Land Use Planning Board: Review of Draft 3 of the Sahtu Land Use Plan* (September 30, 2010): the “**DLC Submission**”. The Speaking Notes will only revisit subjects addressed in the DLC Submission if necessary for emphasis or greater precision.

The Speaking Notes are by their nature, selective. They cannot deal with all of the issues raised by the many submissions to date to the SLUPB. Occurring at the outset of the Norman Wells hearing (the “**Hearing**”), our comments are of an introductory nature.

The Speaking Notes are arranged as follows:

- Parts 2 to 7 make general comments. Their purpose is to help parties to the Norman Wells hearing (the “**Parties**”) — including Sahtu community organizations, the Sahtu Land Use Plan (the “**SLUP**” or the “**Plan**”) approving parties, and 3d parties — to find common ground and potential solutions to the issues before us.
- Parts 8 to 12 address some of the SLUPB’s proposed Hearing Topics.
- Part 13 suggests a few principles to help the Parties come to a consensus on an acceptable SLUP.

### **GENERAL COMMENTS**

#### **2. Need to Find Common Purposes and Interests**

- A. Our common objective here is to develop a SLUP that is consistent with the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (the “**SDMCLCA**”), and that is founded on a common purpose and common interests. Without such a foundation, planning and mediation principles instruct us that we will not succeed in building a coherent and effective SLUP. We need to work collectively on this.
- B. The purpose of the SLUP is given to us. It is as negotiated and set out in 25.2.4 of the SDMCLCA. For the sake of brevity this purpose can be summarized as:
  - a. protecting and promoting the existing and future **well-being** of the residents and communities of the settlement area, having regard to the interests of all Canadians, and paying special attention to protecting and promoting the existing and future social, cultural and economic well

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<sup>1</sup> These Speaking Notes represent the views of the DLC, DRRC and DFN. To avoid having to use “the DLC, DRRC and DFN ...” repeatedly, the Speaking Notes will use the acronym “**DLC**” to refer to all three organizations.

being of participants<sup>2</sup>, their land use, and their rights under the SDMCLCA.

- b. This not the place to analyze the SDMCLCA as a whole. Nonetheless, the DLC wants to emphasize the need to keep the “well-being” purpose in mind, and not allow it to become disconnected from the legally enforceable provisions of the SLUP. It is the negotiated purpose in the SDMCLCA, and the Parties have no authority to disregard it or water it down.

### 3. Sahtu Lands and the SLUP

- A. The SLUP is grounded in the SDMCLCA. In this Agreement, the Sahtu Dene and Métis agreed to extinguish their rights to a vast territory in exchange for a range of rights and privileges. These rights include harvesting rights; rights to participate in decision-making concerning the use, management and conservation of land, water and resources; and rights to land.
- B. The SDMCLCA establishes a unique sort of private or Sahtu Lands. Sahtu Lands are managed in significant measure by regional management authorities, according to the SLUP. The Sahtu Settlement Area is thus different, e.g., from the Inuvialuit Settlement Region, where Inuvialuit have greater powers of management over their private lands. In the Sahtu Settlement Area, participants manage their lands in large measure by their participation in the initial negotiation of the SLUP, and in the review and amendment as needed of this Plan every 5 years thereafter.
- C. This gives the SLUP an extraordinary power. It makes the negotiated purpose of the SLUP as set out above particularly important.
- D. The SDMCLCA and the SLUP also make the Sahtu Settlement Area fundamentally different than the Alberta or the pre-SDMCLCA NWT or those parts of the NWT that do not currently have a modern-day land claim agreement.

### 4. Reconciliation / Common Concepts

- A. The Supreme Court of Canada has told us on several occasions that the *fundamental objective* of the modern law of aboriginal and treaty rights — and of agreements like the SDMCLCA — is *the reconciliation of the claims, interests and ambitions of aboriginal and non-aboriginal Canadians*. The DLC and Déline’s elders take this objective very seriously. In the SLUP, they are attempting to find **reconciling language** as between community organizations and their elders, the SLUPB, the parties that must approve the SLUP and 3d parties. In the SLUP, we are looking collectively for **common concepts, or a common way of speaking and living together**.

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<sup>2</sup> Beneficiaries under the SDMCLCA.

- B. For the DLC and Déline elders, protecting and promoting well-being means **maintaining and promoting the ecological integrity of the land and the well-being of Sahtu communities.**
- C. In the Great Bear Lake Watershed Management Plan (“**GBLWMB**”), Déline worked from 2002 to 2005 with representatives of both levels of government, the SLUPB, MVEIRB, the SRRB and CPAWS (NWT) to find this way of speaking and living together.<sup>3</sup> The Great Bear Lake Working Group used the terms “ecological integrity”<sup>4</sup> and “cultural integrity”<sup>5</sup> as bridging concepts between the English and Slavey speakers of the Working Group. The Great Bear Lake Working Group chose the concept/standard of ecological integrity because of the very close fit between this concept and the concept of Déline’s elders that the Great Bear Lake watershed is one living system that we have a collective responsibility to protect. Déline realizes, however, that other Sahtu communities have, together with the SLUPB, chosen alternative approaches in the SLUP Special Management Zones in their districts.

## 5. What to Aim For

- A. The submissions registered with the SLUPB to date reflect varying approaches to planning, and possibly different concepts of what the SLUP should consist in. **We suggest that the best approach in this first edition of the SLUP is a principled, respectful and practical (learn from implementation) one. We recommend, for all parties’ consideration, a SLUP that is true to the purposes set out above while also being relatively “simple” or modest in ambition.** We should aim collectively for a Plan that:
  - a. can be approved and implemented without further significant delays;
  - b. we can monitor and *learn* from, in the implementation phase;
  - c. we can use, with *real experience in Plan implementation*, in amending and improving the Plan in 5 years; and
  - d. makes it explicit that the Parties intend a relatively modest Plan, that will be monitored during the first 5 years of implementation, and amended

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<sup>3</sup> Please see Part 5 of the DLC Submission for a more complete discussion.

<sup>4</sup> In preparing these Speaking Notes, the DLC realized that it had inadvertently neglected to comment on the definition of “ecological integrity” in D.3 SLUP. But the Hearing is not the place to discuss definitions extensively. Following the Hearing, the DLC will recommend an amended definition of “ecological integrity” to the SLUPB, that includes the concepts that ecological integrity (or ecosystem health) refers to the maintenance of the ecological functions of natural systems, the long-term persistence of these functions without significant change to the ecosystem, and the ability of an ecosystem that has ecological integrity to recover from disturbance and return to a state that is “normal” for that ecosystem type.

<sup>5</sup> “Cultural Integrity” is used in the GBLWMB and in these Speaking Notes as a short form for the negotiated purpose of land use planning as set out in 25.2.4 of the SDMCLCA (well-being), summarized above.

and augmented as needed during the first and subsequent Plan reviews, as required every 5 years.

- e. We should not attempt in this first edition of the Plan to address every desirable refinement of the Plan. Nor should we speculate unnecessarily on what will and will not work without a basis in real SLUP implementation experience.

## 6. Polluter Pays Principle: Onus on the Applicant

- A. In accordance with the polluter pays principle, the onus to demonstrate that proposed activities conform to the SLUP should lie on the proponent or applicant for any permit, licence or other authorization (“**Permits**”), and not on regulators.
- B. It is *for each applicant to adapt its application to SLUP Conformity Requirements*, and to the particular circumstances in which the applicant proposes to carry out its activities. It is very difficult to impossible for the SLUP to anticipate and specifically address all of the circumstances in which applications will be made. That specific adaptation is, in any case, the responsibility of the applicant — and the regulators, in setting conditions on Permits, and not us as the drafters of the SLUP.

## 7. Scope of SLUP: “Relating to the Use of Land or Water or the Deposit of Waste”

- A. SSI has recommended a relatively narrow interpretation of “relating to the use of land or waters or the deposit of waste” in 46(1) of the MVRMA, at pp. 6&7 of SSI’s March 31/11 submission to the Board. The DLC has questions regarding this. It is inclined to giving s. 46(1) and the scope of the SLUP a wider and more purposeful interpretation, in accordance with the negotiated and legislated purpose of land use planning in 25.2.4(a) of the SDMCLCA and the MVRMA as a whole.
- B. Nonetheless, the DLC can see some merit in the arguments and alternative suggested by SSI, most recently in its April 21/11 Hearing Submission. This topic needs further discussion either in the Hearing or by technical representatives of the Parties outside of the Hearing.
- C. But in addition to the “narrower interpretation + list” alternative suggested by SSI, the DLC would like to suggest a “wider interpretation + exclusion list” alternative, for discussion<sup>6</sup>.

## HEARING TOPICS

### 8. Zoning

- A. **Edaiila, Clement and nearby fish lakes, Neregah and Great Bear Lake:** For the DLC’s recommended approach to Edaiila, Clement Lake, Neregah and Great

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<sup>6</sup> That is: an agreed (and adaptable) list of specific Permits to be *excluded* from the purview of the SLUP — unless the activities would require an “Environmental’ Authorization” per SSI’s list at p. 5 of its Submission.

Bear Lake, please see the DLC Submission at parts 4, 9, 10 and 11 respectively. Edaiila should be zoned a Conservation Zone. Clement and nearby fish lakes should be added to the Great Bear Lake Special Management Zone (“**GBL SMZ**”). Neregah should be added to the GBL SMZ, with increased enforcement. And Great Bear Lake should be confirmed as part of the GBL SMZ.

- B. **Exempt Uses:** The DLC submission on exempt uses is set out in part 17 of the DLC Submission. Subject to the wording qualifications set out in the DLC Submission, the agrees with the SLUPB’s statement at p. 26 of Draft 3 of the SLUP (“**D.3 SLUP**”): “For clarity, an existing land use that is exempt from the zoning prohibitions of the Plan is not, for that reason, exempt from any other Conformity Requirements of the Plan.”.
- C. **Grandfathering:** The DLC agrees with the approach taken by the SLUPB at 2.3.1 of D.3 SLUP: “... a land use that has been authorized when the Plan is approved may be undertaken or continued despite any nonconformity with the Plan until the authorization or disposition on which it depends expires or becomes eligible for renewal or amendment. From that date forward the Plan applies to the use, unless the use qualifies for an exemption ...”.
- D. **Quantum Considerations:** The DLC is aware of suggestions/submissions to the effect that there is some maximum quantum or percentage of land within the Sahtu Settlement Area that is reasonable for Conservation Zone designation. The DLC recommends a different way of thinking about this issue. The quantum or percentage of land within the Settlement Area that can be set aside in Conservation Zones should be understood in terms of the **purpose** of land use planning — well-being — and the **capacities** of its residents. Conservation Zones can be designated to achieve at least one of at least two goals:
  - a. for long-term protection, or
  - b. for medium-term protection, until the time when the residents and communities of the Sahtu Settlement Area are able to maintain well-being and maximize the benefits they can derive from the development of Sahtu and Crown lands in the Settlement Area.

We suggest that the SLUPB and the parties approving the SLUP think of proposed Conservation Zones as including places set aside until the younger people of the Settlement Area have acquired the training and education — and the trade & professional designations — that will allow *them* to be the trades-people, surveyors, engineers, geologists, resource economists, sociologists, lawyers, CEOs and shareholders of the companies that will in future develop the resources of Crown and Sahtu Lands. We suggest that until they have developed these capacities, the residents and communities of the Sahtu Settlement Area will realize a small percentage of the value of the resources of their traditional territories. To insist that there some fixed percentage of Settlement Area lands that can be designated as Conservation Zones appears both arbitrary and inconsistent with the purpose in 25.2.4 of the SDMCLCA. It is akin to demanding that southern Canadians sell their houses and stock investments during a down-turn in the economy — like the most recent one — and prior to the time when the owners can realize the full value of their investments and contribute fully to the well-being of their families and their communities.

## 9. Conformity Requirements

- A. **Binding Conformity Requirements:** 25.2.9 of the SDMCLCA and 41(2) & 46(1) of the *Mackenzie Valley Resource Management Act* (“MVRMA”) clearly provide in the SLUP for binding prohibitions and conditions (or “conformity requirements”: “**CR**”). Déline’s elders and organizations have worked for years to fashion a SLUP that constitutes “one law” for Sahtu communities, the GNWT and the Federal Government. That is one of the fundamental purposes of the GBLWMP. Déline’s elders and organizations do not accept the proposition that the SLUP should now be extensively re-written into a collection of recommendations.
- B. **General vs. Specific Conformity Requirements:** The DLC does not agree with the proposition that CRs in the SLUP must always consist of specifically-worded rules that remove any interpretative discretion from the body implementing a CR. This view appears, in the DLC’s opinion, to be a misunderstanding of the nature of a land use plan and a confusion of the work of the SLUPB and that of regulators like the Sahtu Land and Water Board (“**SL&WB**”):
- a. The SLUP should allow general rules relating to the use of land and water and the deposit of waste, together with more specific rules where needed for greater clarity or otherwise warranted and authorized. It is for the regulatory bodies implementing the SLUP to interpret the general and specific rules set out in the SLUP. It is difficult-to-impossible for one SLUP to anticipate all of the factual circumstances in which a rule is to be implemented. Thus the general nature of at least some SLUP rules. It is the job of the regulatory bodies, like the SL&WB, to **adapt** the rules of the SLUP to the wide-ranging particular circumstances in which applications for Permits ... are made and in which the SLUP is to be implemented.
  - b. It has often been said that the SLUP must fit within the larger regulatory scheme contemplated by the SDMCLCA and the MVRMA. The SLUPB is not to undertake the work of the MVEIRB or the work of the SL&WB. It is for the SL&WB to set specific terms and conditions on Permit applications, consistent with the SLUP. To demand that the SLUP must consist only of such specific, no-interpretation-required rules appears to be a confusion of the roles of the SLUPB with the role of the SL&WB. It is for the SL&WB to adapt the SLUP to the vast range of circumstances in which applications are made and the SLUP is to be implemented. It is for the SL&WB to develop the specific, no-interpretation-required Permit conditions that some would like in the SLUP. The roles of the SLUPB and the SL&WB are different, both necessary, and complementary.
- C. **Statement of CRs: “Timing Issues”:** **We recommend, as a general rule, the SLUP simply state the prohibition or condition and leave it up to the regulator(s) to determine when and how to implement the prohibition or condition.** CRs 17-20 are properly drafted. We should reconsider the language in several CRs: “Before any land use activity is authorized ...”. This language is unnecessary. Further, it appears to be giving rise to the confusing question: “Can the full requirement be implemented *prior to* the giving of a Permit ...?” Instead of this approach, the DLC proposes that we think in the following terms:
- a. The obligation to demonstrate to the regulatory authority that its application conforms to the SLUP is the responsibility of the proponent or

applicant for the Permit. In accordance with the “polluter pays principle” the onus to demonstrate is on the proponent.

- b. The SLUP should state the standard that the applicant must meet. The Plan should not attempt to tell the applicant *how* to meet the standard or write its application(s). Again, that is the responsibility of the applicant.
- c. It is, however, appropriate for the SLUPB to *recommend* approaches to applicants. We understand that this is what the Board is doing in its Implementation Guide. (See also below, D.b.)
- d. It is for the regulatory authority(ies) to determine whether the applicant has met its onus:
  - 01. in its application, and
  - 02. *throughout the life* of the Permit. Where questions remain in the regulator’s mind at the application stage, it can satisfy the need for further demonstrations from the applicant in the conditions it attaches to the Permit ... and which run throughout the life of the permit ...

D. **Policy Statements or Guidelines:** SSI suggests at p. 6 of its April 21/11 Hearing Submission that the Board make some CRs into “policy statements or guidelines that would provide clear and definite direction for applicants to consider during the project-planning process and before they make applications which will be judged for conformity to the Plan” (the “Guidelines”). The DLC has 2 comments/questions here:

- a. Aren’t the Guidelines recommended by SSI the same in intent as the guidelines in the Board’s Implementation Guide<sup>7</sup>?
- b. In the DLC’s view, SSI’s Guidelines — and the Board’s Implementation Guide — should constitute *recommendations* only to applicants. The SLUPB should not, through the Guidelines or Implementation Guide, take on the responsibilities of applicants or attempt to tell applicants precisely how to adapt the CRs to the particular circumstances of each application.

E. **CR 2: Community Engagement and Traditional Knowledge:** The Hearing is not the place to work out the specific wording of CRs, including CR 2. We provide the following comments in an effort to contribute to consensus in the discussion of this CR:

- a. The CR is a very important one.
- b. The onus to demonstrate should be on the applicant, not the regulators. The applicant should demonstrate to the body doing the initial conformity determination and to regulators attaching conditions on Permits,
- c. The wording of the CR seems otherwise reasonable to the DLC.

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<sup>7</sup> The DLC has already recommended, in its DLC Submission, that the Implementation Guide should be part of the SLUP,

d. The concern with the wording “designed and carried out” in the second part of the CR has already been addressed above under 9.C (Timing Issues). We suggest that the initial conformity determination look at the “design” of the proposed activity(ies), and that regulators attaching Permit conditions ensure that the proponent/applicant’s ongoing obligation to “carry out” has been addressed in Permit conditions, and can be verified on inspection.

F. **CR 3: Community Benefit:** We agree that this CR needs more discussion in the Hearing. We are aware of the concerns of some other interveners. SSI has suggested a public interest test or community support test. We’d like to hear more about these options. The CR seems inherently tied to the purpose of Sahtu community and resident well-being. If the residents and communities of the Sahtu Settlement Area do not derive reasonable benefits from specific resource developments in their traditional territories — what the elders call a “fair sharing of the benefits of resource development” — how can development be judged consistent with protecting and promoting resident and community well-being? It appears to the DLC that our purposes in CR 3 are relatively clear, and that the issue is how we are to accomplish these purposes.

G. **CR16:** The DLC recommends that this CR read something like: “Activities relating to the use of land or waters or the deposit of waste in the Great Bear Lake watershed (“GLBW”) shall be designed and carried out in a manner consistent with the maintenance of the ecological and cultural integrity of GBLW ecosystems.” Reasoning same as “E.d.” immediately above.

## 10. Below-Threshold Activities

The DLC is concerned about “below-threshold” activities in the Déline District. The DLC’s concerns include the following:

- a. according to the current *Mackenzie Valley Land Use Regulations*, exploration activities can be structured to fall below the threshold requiring a Type B permit or water licence;
- b. requiring no Permit, the activities fall outside of the requirements of the SLUP;
- c. some of these activities could have significant environmental and ecological integrity impacts (e.g., helicopter support for exploration activities);
- d. there is no publicly-accountable monitoring of these activities;
- e. the potential environmental impacts of several small below-threshold activities could well exceed those of a larger project that would require Permits and that would thus trigger the requirement for conformity with the SLUP;
- f. there appears to be no DIAND inspection of these activities (against what standard could the inspection be conducted?).

**The DLC would like this long-standing issue of concern to Sahtu communities addressed in the discussion phase of the Hearing.** If also supported by the other Sahtu communities, **the DLC recommends** that the SLUP recommend mechanisms by which potentially deleterious below-threshold activities could be made subject to the SLUP. Such mechanisms should include the option of an amendment to the *Mackenzie Valley Land Use Regulations* to lower the threshold for activities requiring a Permit, so as to make potentially deleterious activities (including but not limited to the use of helicopters) subject to a Permit requirement and thus the SLUP.

## 11. Implementation Issues: Actions

- A. The DLC's comments on the Actions set out in D.3 SLUP are set out in Part 6 of the DLC Submission. They will only be summarized here, for purposes of helping to frame the discussions in the Hearing.
- B. The Federal and Territorial Governments have indicated in their submissions that they are unlikely to implement the SLUP if it includes mandatory Actions. They could refuse to implement on the basis of their interpretations of law, or as a matter of policy. The DLC is aware of INAC's, the GNWT's and SSI's views that mandatory Actions are beyond the jurisdiction of the SLUP and the SLUPB. The DLC offers no opinion on the legal issue at present. It believes that the larger issues are issues of policy, not of law.
- C. The DLC agrees with the *long-term importance* of all or most of the Actions and Recommendations in D.3 SLUP. But there are so many that they can't all usefully be summarized here. To list just a few:
  - a. **Action 2:** SLUPB shall establish a **Sahtu Working Group**
  - b. **Action 3:** Sahtu Working Group shall develop **Community Engagement Guidelines**
  - c. **Action 4:** Sahtu Working Group shall build on and refine the SLUP's **Conformity Requirements into a set of Best Practices**
  - d. **Action 5:** Sahtu Working Group shall develop and begin implementing a Sahtu **Cumulative Effects Management Plan of Action**
  - e. **Action 6:** Sahtu Working Group shall develop a **Sahtu Environmental Monitoring Program**
  - f. **Recommendation 6:** Every organization, including the DLC/DRRC, is encouraged to have a dedicated **communications position**.
  - g. **Recommendation 7:** INAC encouraged to seek additional funding for inspections in priority areas and **increase inspections**.
  - h. **Action 8:** enforcement authorities shall collaborate with appropriate community organizations (including DLC & DRRC) to develop and begin implementing a Sahtu community - Government strategy to **partner in patrols, monitoring, inspection and enforcement**.
  - i. **Recommendations 8 (economic development strategy), 9 (build capacity), 10 (maximize benefits), 11 (community participation funding)**.
  - j. **Action 9:** Sahtu organizations shall develop **TK guidelines**.
  - k. **Etc:** Other important Actions and Recommendation are identified in D.3 SLUP, but summarizing them here risks overwhelming the listener/reader.
- D. The DLC's policy concerns with D.3 SLUP Actions relate primarily to:
  - a. the "non-feasibility" of carrying all or most of them out within the first 5 years of Plan implementation;
  - b. the need to set priorities within Actions and Recommendations and, even within identified priorities, to be realistic as to what can reasonably be expected within the first 5 years of Plan implementation;
  - c. the absolute need for full community involvement in the Sahtu Working Group and in developing priority Actions; and
  - d. the possibility that, without funding for community involvement *and* priority setting within the Actions, Sahtu communities will once again be

excluded from developing the Actions and thus from land use decision-making.

- E. D.3 SLUP proposes that the several actions and recommendations summarized above be **implemented within 4 years. While the intention is excellent, this appears to the DLC to be an impossible and unrealistic task, not only for the SLUPB, Government, the SRRB and the SL&WB, but particularly for community organizations.** This workload would be well beyond the capacity of most Sahtu community organizations, the regional resource management boards and Government. All of these organizations have other obligations that will compete for their time in the next 5 years.
- F. **Priorities** thus need to be set within the Actions/Recommendations, irrespective of their force as mandatory or discretionary. Further, even with the setting of priorities, it is unrealistic to expect the Sahtu Working Group to do more than **make a good start at priorities during the first 5 years** of implementing the SLUP.
- G. This matter needs further discussion/negotiation. The DLC proposes that it be a subject for discussion, initially, within the Hearing, and subsequently, within the Board's proposed Implementation Workshop.
- a. As a point of departure, the DLC suggests that the SLUP give priority to making a good start on: Action 2 (**Working Group**), Action 3 (**Community Engagement Guidelines**), Action 5 (**Cumulative Effects Management Plan of Action**), Action 6 (**Sahtu Environmental Monitoring Program**), Recommendation 6 (**Communications Person**), Action 8 (**Patrols, Monitoring, Inspection, Enforcement**) and Action 9 (**Traditional Knowledge Guidelines**). Action 4 (**Refine CRs**) should be put in abeyance, until more experience is gained with the implementation of the SLUP. And **even within Actions 3, 5, 6, 8 and 9, further priorities will need to be set**, through discussion within the Working Group and the Sahtu organizations.
  - b. All or most of the Actions and Recommendations in D.3 SLUP are important. Nonetheless, we should ask ourselves — and ultimately the Sahtu Working Group will need to ask itself — questions like:
    01. *How* might the Actions and Recommendations identified above be developed? What human and financial resources, and what background research, would be required to carry out each of these formidable tasks?
    02. How can a *workable* Sahtu Working Group be constituted? What organizations *must* take part in the Working Group? To what bodies might the Working Group report? How do the constraints identified in 01 affect the capacity of each of the members of the Working Group to take part?
    03. Are some Actions obvious priorities (e.g., Actions 2 and 3: Working Group and Community Engagement Guidelines)?
    04. Are some Actions/Recommendations mutually supportive (e.g., Actions 6&8: Sahtu Environmental Monitoring Program and patrols, monitoring, inspection and enforcement)?

05. Are there some Actions that might benefit from more experience in implementing the SLUP and that should therefore be delayed and identified as a secondary priority (e.g. Action 4: refine CRs)?

- H. **The DLC recommends** that the SLUP make it clear that community organizations need *funding for technical support and to participate in the Sahtu Working Group*. The DLC cannot agree with the proposition: "Participation should be voluntary and self-funded." (p. 264, D.3 SLUP). Sahtu communities are the basis of the SLUP (SDMCLCA, 25.2.4). Community participation in the work of the Working Group and in the implementation of the SLUP should be understood to be an integral part of the resource management regime established by the SDMCLCA. It should be understood as the cost of doing business on the negotiated resource management regime. Priority setting ("F" above) will need to take this reality into consideration. The Sahtu Working Group should not be allowed to proceed without community participation and funding for such participation. If community participation is not funded, the salaried employees of the SLUPB, the SL&WB, the SRRB, Government, industry and even NGOs will meet and continue with the work above, while community organizations are again excluded from participation in decision-making. This would be entirely contrary to the well-being of the residents and communities of the Sahtu Settlement Area and Objective 1.1.1(g) of the SDMCLCA.
- I. For the practical, policy reasons set out above, the DLC can currently see no alternative to non-mandatory Actions. **The DLC recommends**, for discussion in the Hearing, that all Parties agree to a SLUP that strongly recommends federal funding for community participation in the Sahtu Working Group.

## 12. Further Implementation Issues

- A. The DLC's views on the *timing* of conformity requirements are stated above (9(C)).
- B. The DLC is interested in the concept of having the SLUPB do most SLUP conformity determinations during the first 5 years of Plan implementation. The Board would thus develop the capacity to carry out such determinations in a consistent manner, and conflicting conformity determinations by different regulators would be avoided. This is worth further discussion.
- C. As a practical first step in accomplishing this objective, the DLC wonders whether the SLUPB is willing to approach the referring regulators under 47(1)(a) of the MVRMA to determine their willingness to refer to the Board during the first 5 years of Plan implementation?

## PRACTICAL PRINCIPLES

### 13. Practical Principles to Help Find Consensus in the Hearing and Complete the SLUP

- A. Keep the Purpose in Mind: Plan with well-being as the purpose.
- B. The Polluter Pays Principle: The onus is on the applicant for Permits to demonstrate, to the bodies doing conformity determinations and issuing Permits that it (the applicant) meets the terms of the SLUP.

- C. Applicant Responsible for its Application & Activities: The applicant for a Permit is ultimately responsible for the content of its application. We should not, in the SLUP, try to tell applicants precisely how to work with communities or draft their applications or carry out their activities. We should, in the SLUP, provide the standards the applicants will be required to meet. And we could — in the Implementation Guide — *recommend* approaches to applicants.
- D. Fit Within the Larger Regulatory System: The SLUP will be complimented by the environmental screening and assessment system implemented by MVEIRB. And it will be interpreted and implemented through the Permit system implemented by regulatory bodies like the SL&WB. While there may sometimes be overlap among these different components of the larger system, we should not ask the SLUP to do the work, e.g., of the SL&WB.
- E. A Relatively Simple and Learn-from-Implementation SLUP: We suggest that we finalize a relatively modest or “simple” SLUP; that the approving parties approve it; that we implement it, and learn from monitoring the plan’s implementation; and that we revise it as needed at the first 5-year review and subsequent reviews.